

retrieved presently. Claim 2 also recites that the content retrieval device comprises a protocol section operable to select, prior to reception of the sub-content data, a suitable connection method for the sub-content data specified by the browser section from among a plurality of connection methods by using a multi-call function, based on the connection method information extracted by the browser section.

Accordingly, claim 2 recites that the browser section of the content retrieval device, which is a device that receives content data from a server (i.e., not a server that transmits data to a client device), is operable to extract the connection method information of each sub-content data by analyzing the received content data. The protocol control section of the content retrieval device is operable to select, prior to reception of the sub-content data, a suitable connection method for connecting to the server to receive the sub-content data.

Mutschler discloses a Web browser program that operates on a data receiving (client) side (see Column 11, lines 4-48). On page 3 of the Office Action, the Examiner acknowledged that Mutschler does not disclose or suggest a protocol control section of a content retrieval device which selects a suitable connection method for connecting to the server to receive the sub-content data.

To teach this feature of the present invention, the Examiner applied Lev. In contrast to Mutschler, Lev discloses a data transmission method that operates on a data transmitting side (i.e., server). Accordingly, the Web browser program of Mutschler and the data transmission method of Lev are distinctly different from each other, as the Web browser program of Mutschler receives data from a server, and the data transmission method of Lev is a server that transmits data to a client device. There is no suggestion or motivation in either Mutschler or Lev to combine the Web browser program of Mutschler with the data transmission method of Lev to arrive at a content retrieval device which performs all of the functions of the content retrieval device of claim 2.

Accordingly, since there is no suggestion or motivation to combine Mutschler and Lev, Mutschler and Lev are not properly combinable references, and therefore, the invention of claim 2 is not obvious in view of Mutschler and Lev.

Nonetheless, the Examiner opined that it would have been obvious to combine Mutschler and Lev to arrive at the invention of claim 2. Lev discloses a selection of a

method for connecting from an application on the transmitting data side to a client (corresponding to the content retrieval device of the present invention).

Accordingly, similar to Mutschler, Lev does not disclose or suggest a content retrieval device (data receiving device) which performs an operation of selecting a suitable connection method for retrieving data from a server. The Examiner even acknowledges that “the system of Lev determines the connection type at the source [server] rather than the destination [content retrieval device].” Yet, the Examiner reasons that one skilled in the art would substantially modify the teachings of Lev to include the operation of selecting a connection type, which is performed in a server, and apply this teaching to the system of Mutschler so as to result in the invention of claim 2.

The Examiner is respectfully reminded that an obviousness rejection cannot be based on the resort of the Examiner to various non-pertinent references and the combination of bits and pieces of the references in light of the Applicants’ claimed invention. An extensive discussion of the criteria to be applied in obviousness rulings is set forth in In re Gordon, 733 F.2d 900, 902, 221 U.S.P.Q. 1125, 1127 (Fed Cir. 1984), which clearly states the long-held proposition that “the fact that a prior art reference can be modified to show the patented invention does not make the modification obvious unless the prior art reference suggests the desirability of the modification.” (emphasis added) An attempted modification of a prior art reference that is unwarranted by the disclosure of that reference is thus improper. Accordingly, the Examiner must make a showing that the combination of two or more references was suggested by the references.

The Examiner made no showing that either Mutschler or Lev suggest incorporating the operation of selecting a connection type of Lev to the system of Mutschler. The Examiner merely opined that it would have been obvious to combine Mutschler and Lev to incorporate the desirability and advantages of both systems. However, since the Examiner has not been able to point to any explicit or implicit suggestion in either Mutschler or Lev to substantially modify the operation of a server of Lev in selecting a connection type and applying this feature to the Web browser program of Mutschler, the Examiner has failed to satisfy his burden of establishing *prima facie* obviousness.

Accordingly, the Examiner has not established a case of *prima facie* obviousness of claim 2 in view of Mutschler and Lev. Therefore, claim 2 is clearly not obvious over Mutschler and Lev.

The Applicants respectfully submit that the Examiner is using impermissible hindsight in attempting to combine bits and pieces of Mutschler and Lev to arrive at the invention of claim 2. As described above, there is no suggestion or motivation, other than the Examiner's constructed suggestion, to substantially modify the teachings of the server of Lev, apply these teachings to a data retrieving device, and combine this data retrieving device to the Web browser program of Mutschler.

The Applicants respectfully submit that Mutschler and Lev are also not properly combinable to arrive at the inventions of claims 3-5, 7-10, 12-15 and 17-20 for the same reasons presented above.

Even if the Examiner maintains his improper modification and combination of Mutschler and Lev, the Examiner's modification and combination of Mutschler and Lev do not disclose or suggest each and every limitation of claim 2. The Examiner is respectfully reminded that to establish *prima facie* obviousness of a claimed invention under 35 U.S.C. 103(a), all of the claim limitations must be disclosed or suggested by the applied prior art. See CFMT, Inc. v. YieldUp Int'l Corp., 349 F.3d 1333, 1342, 68 U.S.P.Q.2D 1940, 1946-47 (Fed. Cir. 2003); In re Royka, 490 F.2d 981, 985, 180 U.S.P.Q. 580, 583 (C.C.P.A. 1974).

As described above, Lev discloses that the server device selects a method for connecting to a data receiving device. The server of Lev decides the suitable connection method based on a message type 403 that is intended to be received by a data receiving device. For instance, if the message is a short type, such as an e-mail, the server selects to send the data to the data receiving device by using a packet-switched network. On the other hand, if the message is a long type, such as a file transfer, the server selects to send the data to the data receiving device by using a circuit-switched network (see Column 4, lines 39-57 and Figure 4).

Accordingly, Lev discloses that the server decides the suitable connection method based on data stored in the server.

In contrast to Lev, the content retrieval device of claim 2 receives the content data from the server, the browser section extracts the connection method information of each of the sub-content data by analyzing the received content data, and the protocol control section selects a suitable connection method for the sub-content data based on the connection method information extracted by the browser control section.

Accordingly, the content retrieval device of claim 2 receives and analyzes content data from another device (server) and then selects a suitable connection method for receiving the sub-content data of the received content data.

Therefore, even if the Examiner were to substantially modify the teachings of Lev and combine the modified teachings of Lev to those of Mutschler, Lev still does not cure the deficiencies of Mutschler because Lev fails to disclose or suggest performing a selection of a suitable connection method only after the data is received from another device.

Accordingly, even if Mutschler and Lev were properly combinable, Mutschler and Lev, either individually or in combination, clearly do not disclose or suggest each and every limitation of claim 2.

Therefore, no obvious combination of Mutschler and Lev would result in the invention of claim 2 since Mutschler and Lev, either individually or in combination, clearly do not disclose or suggest each and every limitation of claim 2.

Claim 2 is therefore patentable over Mutschler and Lev.

Claims 7, 12 and 17 are patentable over Mutschler and Lev for the same reasons that claim 2 is patentable.

Claims 7, 12 and 17 each recite a content retrieval method for receiving content data from a server via a communication network, where the method includes, in part, extracting the connection method information of each of the sub-content data by analyzing the received content data, and selecting, prior to reception of the sub-content data, a suitable connection method for the sub-content data based on the extracted connection method information of the received content data.

As described above, Lev does not disclose or suggest selecting a suitable connection method to receive sub-content data from a server after the content data is received from the server. Accordingly, even if Mutschler and Lev were properly

combinable, Mutschler and Lev, either individually or in combination, clearly do not disclose each and every limitation of claims 7, 12 and 17.

Therefore, claims 7, 12 and 17 are also clearly allowable over Mutschler and Lev since Mutschler and Lev clearly fail to disclose or suggest each and every limitation of claims 7, 12 and 17.

Claims 3, 8, 13 and 18 are also clearly patentable over Mutschler and Lev for the same reasons presented above. In particular, claims 3, 8, 13 and 18 each recite selecting the suitable connection method pairing with the file attribute that is extracted from the received content data. Accordingly, claims 3, 8, 13 and 18 also each recite receiving data from another device (server) before selecting a suitable connection method, whereas Lev merely discloses selecting a suitable connection method to transfer data to a data receiving device based on the data stored in the server.

Accordingly, even if Mutschler and Lev were properly combinable, Mutschler and Lev, either individually or in combination, clearly do not disclose each and every limitation of claims 3, 8, 13 and 18.

Therefore, claims 3, 8, 13 and 18 are also clearly allowable over Mutschler and Lev since Mutschler and Lev clearly fail to disclose or suggest each and every limitation of claims 3, 8, 13 and 18.

Lev also does not disclose or suggest a content retrieval device (or the server) receiving a suitable connection method pairing with the part of the locational information included in the retrieval request, and selecting a suitable connection method for the specified content data from among a plurality of connection methods based on the received suitable connection method, as recited in claims 4, 9, 14 and 19.

Accordingly, even if Mutschler and Lev were properly combinable, Mutschler and Lev, either individually or in combination, clearly do not disclose each and every limitation of claims 4, 9, 14 and 19.

Claims 5, 10, 15 and 20 are also clearly patentable over Mutschler and Lev because claims 5, 10, 15 and 20 each recite receiving data (content header) from the server, and then selecting a suitable connection method for receiving the content data by extracting the suitable connection method pairing with the file attribute included in the received content header.

As described above, Lev does not disclose or suggest selecting a suitable connection method in a content retrieval device (or in the server of Lev) after data is received from another device (server). Instead, the server of Lev selects a suitable connection method for transmitting the data to a content retrieval device based on the data stored in the server.

Accordingly, Mutschler and Lev similarly do not disclose each and every limitation of claims 5, 10, 15 and 20.

Therefore, even if Mutschler and Lev were properly combinable, claims 5, 10, 15 and 20 are clearly patentable over Mutschler and Lev, either individually or in combination, clearly do not disclose or suggest each and every limitation of claims 5, 10, 15 and 20.

Claims 3-5, 8-10, 13-15 and 18-20 are also similarly patentable over Mutschler and Lev because the Examiner has impermissibly combined bits and pieces of Mutschler and Lev to modify these references even though these references do not provide any suggestion or hint at the desirability of the Examiner's hindsight-motivated modification of the applied references.

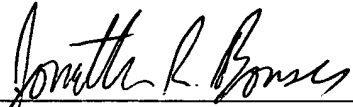
Because of the clear distinctions discussed above, it is submitted that the teachings of Mutschler and Lev et al. clearly do not meet each and every limitation of claims 2-5, 7-10, 12-15 and 17-20. Furthermore, it is submitted that the distinctions are such that a person having ordinary skill in the art at the time the invention was made would not have been motivated to modify Mutschler and Lev in such a manner as to result in, or otherwise render obvious, the present invention as recited in claims 2-5, 7-10, 12-15 and 17-20. Therefore, it is submitted that the claims 2-5, 7-10, 12-15 and 17-20 are clearly allowable over the prior art as applied by the Examiner.

In view of the foregoing remarks, it is respectfully submitted that the present application is clearly in condition for allowance. An early notice thereof is respectfully solicited.

If, after reviewing this Amendment, the Examiner feels there are any issues remaining which must be resolved before the application can be passed to issue, the Examiner is respectfully requested to contact the undersigned by telephone in order to resolve such issues.

Respectfully submitted,

Takuya KOBAYASHI et al.

By:   
Jonathan R. Bowser  
Registration No. 54,574  
Attorney for Applicants

JRB/nrj  
Washington, D.C. 20006-1021  
Telephone (202) 721-8200  
Facsimile (202) 721-8250  
September 16, 2005